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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-631

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In re Applications of)	MM DOCKET NO. 93-75
)	
TRINITY BROADCASTING OF FLORIDA, INC.)	File No. BRCT-911001LY
)	
For Renewal of License of)	
Station WHFT(TV) on Channel 45,)	
Miami, Florida)	
)	
and)	
)	
GLENDALE BROADCASTING COMPANY)	File No. BPCT-911227KE
)	
For a Construction Permit for a New)	
Commercial TV Station to operate on)	
Channel 45, Miami, Florida)	

MEMORANDUM OPINION AND ORDER

Issued: September 30, 1993 Released: October 4, 1993

1. Under consideration are "Second Motion To Enlarge Issues Against Glendale Broadcasting Company" filed August 27, 1993 by Trinity Broadcasting of Florida, Inc. (Trinity), Mass Media Bureau Comments In Support of Second Motion To Enlarge Issues filed September 15, 1993, Opposition To Second Motion To Enlarge Issues Against Glendale Broadcasting Company filed September 15, 1993 by Glendale Broadcasting Company (Glendale), and Reply To Opposition To Second Motion To Enlarge Issues filed September 22, 1993 by Trinity.

2. Trinity seeks an issue to determine whether Raystay Company (Raystay), which is controlled by Glendale principal George Gardner, committed misrepresentations in an application (File No. BAPTTL-920113IB) for consent to the assignment of construction permit for unconstructed Low Power Television Station W56CJ, Red Lion/York (Red Lion), Pennsylvania, to Grosat Broadcasting, Inc. Specifically, Trinity alleges that Raystay falsely certified to its legal and engineering expenses in order to evade Section 73.3597(c)(2) of the Commission's Rules which restricts to legitimate and prudent costs what a seller may receive in connection with the sale of an unbuilt station.

3. Raystay represented in the assignment application that it had incurred a total of \$10,498 in expenses in connection with obtaining the Red Lion construction permit. According to a certification signed by David Gardner (George Gardner's son), this amount consisted of legal fees from the law firm of Cohen & Berfield in the amount of \$7,698; engineering fees from the consulting firm of Robert Hoover in the amount of \$2,425; and FCC filing fees of \$375. The sales price specified in the Red Lion agreement was \$10,000.

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4. In support of its Second Motion, Trinity relies on two documents obtained during discovery in this proceeding. One of the documents is a letter from Cohen & Berfield to Raystay, and the other is an invoice from the Hoover engineering consulting firm to Raystay. The Cohen & Berfield letter states that the law firm billed Raystay in the amount of \$15,397.03 in connection with five LPTV authorizations, including the Red Lion authorization. There is no suggestion in the Cohen & Berfield letter as to how much, if anything beyond one-fifth, of the \$15,397.03 was attributable to work done exclusively with respect to the Red Lion authorization. The Hoover invoice, on the other hand, is more specific. Of the total \$7,275 which the Hoover company billed for work in connection with the five Raystay LPTV authorizations, no more than \$1,525 was attributable to the Red Lion construction permit. Based on the numbers contained in the referenced documents, Trinity argues that Raystay's actual expenses in connection with the Red Lion authorization were more in the neighborhood of \$5,000, rather than the \$10,498 which Raystay claimed in its assignment application. According to Trinity, Raystay's obvious motive in inflating the amounts attributable to the Red Lion authorization was to justify the \$10,000 sales price and skirt the Commission's reimbursement restrictions, reaping twice as much money from the sale of the unbuilt LPTV station than allowed by the Commission.

5. Glendale argues in its Opposition that it could permissibly allocate to the Red Lion permit one third of the total engineering costs because the engineering involved three sites (not five). Also, it could allocate one half of the total legal costs for five permits to one permit because "seventy-five to eighty percent" of the total legal fees would have been charged if the Red Lion application had been the only application. Opposition, p. 6. However, Glendale cites no legal authority for its argument. In this connection, as pointed out by Trinity, a pro-rata allocation in situations where common costs are incurred for multiple permits finds clear precedent under the case law. See Integrated Communications System, Inc. of Massachusetts, 5 RR 2d 725, 726-727 (Rev. Bd. 1965). Moreover, Glendale's Opposition offers no explanation for Raystay's failure to disclose in its certification that the expenses claimed for the Red Lion permit were shared expenses for multiple permits. In this regard, the certification signed by David Gardner states that the expenses claimed were incurred in obtaining "the construction permit being assigned." Moreover, Glendale's Opposition does not include an affidavit from David Gardner, who, as noted, signed the certification, or Raystay principal, George Gardner. In sum, Trinity has made out a prima facie case raising substantial questions whether Raystay's certification was made in good faith. The requested misrepresentation issue will be added.

Accordingly, IT IS ORDERED, That the "Second Motion To Enlarge Issues Against Glendale Broadcasting Company" filed August 27, 1993 by Trinity Broadcasting of Florida, Inc. IS GRANTED and the following issue IS ADDED against Glendale Broadcasting Company:

"To determine whether Raystay Company made misrepresentations or lacked candor in its application to assign the construction permit of low power television station W23AY, Red Lion/York Pennsylvania (BAPTTL-920114IB), and if so, the effect thereof on Glendale Broadcasting Company's qualifications to be a licensee." ¹

IT IS FURTHER ORDERED, That the burden of proceeding and proof on the added issue IS PLACED on Glendale Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin

Joseph Chachkin
Administrative Law Judge

¹ There is insufficient time to schedule the issue for trial at the session that begins November 29, 1993. A procedural schedule for trial of the added issue will be established at the conclusion of the first session.